HON'BLE SHRI G.S. SINGHVI, THE CHIEF JUSTICE

WRIT PETITION NO. 15010 OF 1996

BETWEEN

Ahmed Nizamuddin

.....**Petitioner**

And

General Manager, Telephones,
Hyderabad Telecommunications,
Hyderabad & others

.....**Respondents**

:: O R D E R::

Counsel for the Petitioner : Ms. Usha Padmini

Counsel for the Respondents : Shri Y. Ravindra

Dated: 14.06.2006

In this petition, the petitioner has prayed for quashing bills dated 11.11.1995, 11.01.1996, 11.03.1996 and 11.05.1996 raised

by the Department of Telephone, Hyderabad District.

The aforementioned prayer of the petitioner is founded on the assertion that even though telephone No.316584 installed at his residence went out of order in second week of November 1995 and was not restored till July 1996 despite several complaints, the departmental authorities have raised bill for that period. According to the petitioner, the respondents cannot compel him to pay bills for the period during which services were not provided to him.

In the counter affidavit filed by Shri Y. Raghavendra Rao, Assistant Engineer (Legal Cell-II) working in the office of Principal General Manager, Hyderabad Telecom District, Hyderabad, the petitioner's assertion that his telephone remained out of order from November 1995 to July 1996 has been denied. In paragraph 4 of his affidavit, Shri Raghavendra Rao has averred as under:

> " With reference to para 3, it is submitted that the telephone was disconnected on 13.09.1995 due to non-payment of bills and it was reconnected on 26.09.1995. The telephone worked continuously thereafter. It was only on 12.06.1996 a fault was reported and the same was rectified within three hours. Another fault was reported on 23.07.1996 which was rectified on 26.07.1996. There were no faults or complaints reported between the period 26.09.1995 to 12.06.1996."

The petitioner has neither filed rejoinder to controvert the above reproduced averments nor he has placed on record any tangible evidence to show that the telephone installed at his residence had, as a matter of fact, remained out of service from second week of November 1995 to July 1996.

We have heard learned counsel for the parties and perused

the record.

Shri Y. Ravindra, learned counsel appearing for the respondents argued that the Court should decline relief to the petitioner because an effective alternative remedy is available to him by way of arbitration under Section 7-B of the Indian Telegraph Act, 1885 (for short 'the Act'). He further argued that in exercise of power under Article 226 of the Constitution, the High Court cannot decide the disputed question of fact as to whether the telephone of the petitioner remained out of service from second week of November 1995 to July 1996 or not.

Ms.Usha Padmini, learned counsel for the petitioner argued that Article 226 of the Constitution does not contain a bar to the entertaining of petition only on the ground of availability of alternative remedy and, therefore, the Court may not decline relief to her client only on the ground that he has not resorted to the remedy of arbitration in terms of Section 7-B of the Act. She further argued that even if this Court feels convinced on the issue of efficacy of remedy available under Section 7-B of the Act, the petitioner may not be relegated to that remedy at this belated stage.

In abstract, argument of the leaned counsel for the petitioner sounds attractive, but I am not inclined to accept the same. It is true that the language of Article 226 does not, in terms, contain any restriction on the exercise of power to issue direction, orders or writs in the nature of prerogative writs, but, in last 55 years, the superior courts have evolved several rules of self-restraint including the one that the High Court will not entertain petition under Article 226 of the Constitution, if an effective alternative remedy is available to the petitioner and, in a large

number of cases, the relief has been declined to the petitioner on the ground that an effective alternative remedy is available to him.

In **A.V. Venkateshwaran v. R.S. Wadhwani**[1], the Constitutional Bench of the Supreme Court while reiterating the rule that the party who applies for the issue of a high prerogative writ should, before he approaches the Court, exhaust the other remedies open to him under the law is not one which bars the jurisdiction of the High Court to entertain the petition but is a rule evolved by the Courts for the exercise of their discretion, observed as under:

> " The wide proposition that the existence of an alternative remedy is a bar to the entertainment of a petition under Art.226 of the Constitution unless (1) there was a complete lack of jurisdiction in the officer or authority to take the action impugned, or (2) where the order prejudicial to the writ petitioner has been passed in violation of the principles of natural justice and could, therefore, be treated as void or non est and that in all other cases, Courts should not entertain petitions under Art.226, or in any event not grant any relief to such petitioners cannot be accepted. The two exceptions to the normal rule as to the effect of the existence of an adequate alternative remedy are by no means exhaustive, and even beyond them a discretion vests in the High Court to entertain the petition and grant the petitioner relief notwithstanding the existence of an alternative remedy. The broad lines of the general principles on which the Court should act having been clearly laid down, their application to the facts of each particular case must necessarily be dependent on a variety of individual facts which must govern the proper exercise of the discretion of the Court, and in a matter which is thus pre-eminently one of

discretion, it is not possible or even if it were, it would not be desirable to lay down inflexible rules which should be applied with rigidity in every case which comes up before the Court."

In **Thansingh Nathmal v. Superintendent of Taxes**[2], another Constitutional Bench of the Supreme Court considered the question relating to exercise of discretion by the High Court in entertaining a writ petition despite the availability of alternative remedy and held:

> " The jurisdiction of the High Court under Article 226 of the Constitution is couched in wide terms and the exercise thereof is not subject to any restrictions except the territorial restrictions which are expressly provided in the Articles. But the exercise of the jurisdiction is discretionary: it is not exercised merely because it is lawful to do so. The very amplitude of the jurisdiction demands that it will ordinarily be exercised subject to certain self-imposed limitations. Resort that jurisdiction is not intended as an alternative remedy for relief which may be obtained in a suit or other mode prescribed by statute. Ordinarily, the Court will not entertain a petition for a writ under Article 226, where the petitioner has an alternative remedy, which without being unduly onerous, provides an equally efficacious remedy. Again the High Court does not generally enter upon a determination of questions which demand an elaborate examination of evidence to establish the right to enforce which the writ is claimed. The High Court does not therefore act as a Court of appeal against the decision of a court or Tribunal, to correct errors of fact, and does not by assuming jurisdiction under Article 226 trench upon an alternative remedy provided by statute for obtaining relief. Where it is open to the aggrieved petitioner to move another

tribunal, or even itself in another jurisdiction for obtaining redress in the manner provided by a statute, the High Court normally will not permit by entertaining a petition under Article 226 of the Constitution the machinery created under the statute to be bypassed, and will leave the party applying to it to seek resort to the machinery so set up."

In **Baburam v. Zilla Parishad**[3], the Supreme Court reiterated the rule of alternative remedy in the following words:

" When an alternative and equally efficacious remedy is open to a litigant he should be required to pursue that remedy and not to invoke the special jurisdiction of the High Court to issue a prerogative writ. It is true that the existence of a statutory remedy does not affect the jurisdiction of the High Court to issue a writ. But, the existence of an adequate legal remedy is a thing to be taken into consideration in the matter of granting writs and where such a remedy exists it will be a sound exercise of discretion to refuse to interfere in a writ petition unless there are good grounds therefor. But it should be remembered that the rule of exhaustion of statutory remedies before a writ is granted is a rule of self imposed limitation, a rule of policy, and discretion rather than a rule of law and the Court may therefore in exceptional cases issue a writ such as a writ of certiorari, notwithstanding the fact that the statutory remedies have not been exhausted."

Their Lordships carved out the following two exceptions to the rule of alternative remedy:

(1) where proceedings are taken before a Tribunal under a provision of law, which is ultra vires to the Constitution,

(2) where the impugned order has been made in violation of the rules of natural justice.

In **Champa Lal v. I.T. Commissioner**[4], **J.M.& Co. v. Agricultural I.T. Officer, Assam**[5], **C.I.T. v. Ramendra Nath Ghosh**[6], **Swadeshi Cotton Mills Co. Ltd. v. Government of U.P.**[7], **Gujarat University v. N.U. Rajguru**[8], **State of H.P. v.Raja Mahendra Pal**[9], **L.L.Sudhakar Reddy v. State of A.P.**[10], **State of Bihar v. Jain Plastics & Chemicals Ltd.**[11], **Harbanslal Sahnia v. Indian Oil Corporation Ltd.**[12] **and ABL International Ltd. v. Export Credit Guarantee Corporation of India Ltd.**[13], the Supreme Court applied the rule of alternative remedy in different situations. In **Harbanslal Sahnia's case** (supra) the Supreme Court considered the situations in which the High Court can exercise under Article 226 of the Constitution of India notwithstanding the availability of alternative remedy and held:

> " The rule of exclusion of writ jurisdiction by availability of an alternative remedy is a rule of discretion and not one of compulsion. In an appropriate case, in spite of availability of the alternative remedy, the High Court may still exercise its writ jurisdiction in at least three contingencies: (i) where the writ petition seeks enforcement of any of the fundamental rights;(ii) where there is failure of principles of natural justice; or (iii) where the orders or proceedings are wholly without jurisdiction or the vires of an Act is challenged. (See **Whirlpool Corpn. v. Registrar of Trade Marks {(1998) 8 SCC 1}**. The present

> case attracts applicability of the first two contingencies. Moreover, as noted, the petitioners' dealership, which is their bread and butter, came to be terminated for an irrelevant and non-existent cause. In such circumstances, we feel that the appellants should have been allowed relief by the High Court itself instead of driving them to the need of initiating arbitration proceedings."

Reverting to the facts of the case in hand, I find that while the petitioner has averred that the telephone installed at his residence remained out of order from second week of November 1995 to July 1996, this has been specifically denied in the counter affidavit filed on behalf of the respondents. Rather, the categorical stand taken by the respondents is that the telephone was disconnected on 13.09.1005 due to non-payment of bills and it was re-connected on 26.09.1995. Thereafter, the telephone worked continuously. On 12.06.1996, a fault was reported and the same was rectified within three hours. Another fault was reported on 23.07.1996, which was rectified on 26.07.1996. During the intervening period, no complaint was received from the petitioner. The petitioner, as mentioned hereinabove, has not filed rejoinder to controvert the affidavit filed on behalf of the respondents. In my view, the question whether the telephone had remained out of order for a continuous basis of almost eight months, as alleged by the petitioner, or it remained out of order for few days only (once as a result of disconnection on account of nonpayment of bills and on two other occasions due to faults) can be decided only after giving opportunity to the parties to lead evidence and there is no reason to convert jurisdiction of this Court under Article 226 of the Constitution into that of an arbitrator. Therefore, even though the

writ petition has remained pending for almost ten years, I am inclined to upheld the preliminary objection raised by the counsel for the respondents that the petitioner should be relegated to the remedy of arbitration in terms of Section 7-B of the Act.

For the reasons afore-stated, the writ petition is dismissed leaving the petitioner free to avail the remedy of arbitration in terms of Section 7-B of the Act. If the petitioner makes an application within one month for adjudication of the dispute in terms of Section 7-B of the Act, then the same shall be decided by the Arbitrator on merits.

G.S.SINGHVI, CJ

ksld /
svs
14.06.2006

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[1] AIR 1961 SC 1506
[2] AIR 1964 SC 1419
[3] AIR 1969 SC 556
[4] AIR 1970 SC 645
[5] AIR 1970 SC 1980
[6] (1972) 4 SCC 379
[7] (1975) 4 SCC 378
[8] AIR 1988 SC 66
[9] (1999) 4 SCC 43
[10] (2001) 6 SCC 634
[11] (2002) 1 SCC 216
[12] (2003) 2 SCC 107
[13] (2004) 3 SCC 553